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 13 TWITCH INTERACTIVE, INC.

13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA
 15 SAN JOSE DIVISION

16 IN RE: PERSONALWEB TECHNOLOGIES,
 17 LLC ET AL., PATENT LITIGATION,

18 AMAZON.COM, INC., and AMAZON WEB
 19 SERVICES, INC.,

19 Plaintiffs,

20 v.

20 PERSONALWEB TECHNOLOGIES, LLC and
 21 LEVEL 3 COMMUNICATIONS, LLC,

21 Defendants.

22
 23 PERSONALWEB TECHNOLOGIES, LLC and
 24 LEVEL 3 COMMUNICATIONS, LLC,

24 Plaintiffs,

25 v.

26 TWITCH INTERACTIVE, INC.,

27 Defendant.

Case No.: 5:18-md-02834-BLF

Case No.: 5:18-cv-00767-BLF

Case No. 5:18-cv-05619-BLF

**UPDATED CASE MANAGEMENT
 STATEMENT BY AMAZON.COM, INC.,
 AMAZON WEB SERVICES, INC., AND
 TWITCH INTERACTIVE, INC.**

1 In advance of the May 13, 2021 case management conference, Amazon.com, Inc., Amazon
2 Web Services, Inc., and Twitch Interactive, Inc. (collectively, “Amazon”) submit this statement
3 apprising the Court of recent developments.

4 On April 27, 2021, the Court ordered PersonalWeb to produce its bank and financial account
5 information by May 7, to produce the other records requested by Amazon under Cal. Civ. Proc.
6 Code § 708.030 within 30 days, and to appear for a debtor’s examination on May 25. (Dkts. 664
7 & 665, Case No. 5:18-md-02834.) PersonalWeb’s counsel of record at Stubbs Alderton & Markiles
8 LLP received these orders through ECF but continue to assert that service on them is ineffective.
9 In recent email correspondence, for example, PersonalWeb’s counsel stated:

10 As I told you before and I will tell you again, we are not counsel for Personal Web
11 in any of the post judgment collection proceedings, only the appeals. Nothing has
12 changed. We have never agreed to accept service for the client, verbally or
otherwise.

13 (Ex. E at 3.)

14 Amazon also provided the Court’s orders via email to Ronald Richards, an attorney who
15 PersonalWeb has now retained to resist enforcement of the judgment. Mr. Richards reported that
16 he does not plan to appear in this case “except for post judgment motions if for some reason we
17 need to involve the Court.” (*Id.* at 4.) After receiving the Court’s orders, he nonetheless instructed
18 PersonalWeb’s counsel of record that they are “not authorized” by PersonalWeb “to do anything
19 post judgment.” (*Id.* at 1.) Mr. Richards also noted that he will “construe” the Court’s order
20 compelling document production as a “subpoena” and he further asserted that neither Court order
21 is effective until personally served on PersonalWeb. (Ex. F at 1.)

22 To resolve the dispute over service pending further direction from the Court, Amazon
23 served all relevant post-judgment documents on Mr. Richards by certified mail (Dkt. 668) and on
24 PersonalWeb’s registered agent by personal delivery (Dkt. 670). Amazon also attempted service
25 at PersonalWeb’s office but was informed that PersonalWeb closed it two years ago. (Ex. G.)
26 PersonalWeb also closed the UPS store mailbox that had served as its address thereafter. (Ex. H.)

27 Neither Stubbs Alderton nor Mr. Richards responded to additional requests to identify the
28 attorney who would appear for PersonalWeb at the upcoming case management conference. (Exs.

1 I & J). Instead, they made various proposals that would allow both law firms the practical ability
 2 to advocate for PersonalWeb’s positions on judgment enforcement, while maintaining the fiction
 3 that neither represents PersonalWeb before this Court for that purpose. *Id.* Mr. Richards also stated
 4 he would file a “motion to quash” the Court’s order but went silent after Amazon offered to conduct
 5 a telephone conference once he had filed his appearance. (Ex. K.)

6 On May 7, 2021, PersonalWeb did not produce any of its bank and financial account
 7 information as the Court ordered. Instead, it filed a “statement” concerning the case management
 8 conference, signed on behalf of PersonalWeb by Michael Sherman, but that purports to relay only
 9 the positions of the Stubbs Alderton law firm. (Dkt. 671.)

10 ***Debtor’s Exam.*** California law requires the creditor to personally serve the order
 11 compelling attendance at a debtor’s examination not less than 10 days before the date set for the
 12 examination. Cal. Civ. Proc. Code § 708.110 (d). Doing so both compels the debtor to attend and
 13 creates a lien on the personal property of the judgment debtor for a period of one year from the date
 14 of the order. *See id.* It is unclear whether a creditor seeking to examine a debtor in federal court
 15 under Rule 69 must personally serve the order compelling attendance. *See e.g., Gavrieli Brands*
 16 *LLC v. Soto Massini (USA) Corp.*, No. 3:20-MC-01221, 2020 WL 7226169, at *3 (S.D. Cal. Dec.
 17 8, 2020) (requiring the plaintiff to personally serve the order on defendant’s registered agent);
 18 *Cerami v. Robinson*, 85 F.R.D. 371, 372 (S.D.N.Y. 1980) (service of attorney was sufficient under
 19 Rules 5 and 69 to require the debtor to appear for a post-judgment deposition). Regardless, Amazon
 20 has personally served PersonalWeb with the order compelling attendance at the May 25 exam.
 21 (Dkt. 670.)

22 ***Other Post-Judgment Proceedings.*** Personal service is not required for discovery requests
 23 in aid of enforcement under Fed. R. Civ. P. 69 and Cal. Civ. Proc. Code §§ 708.020-030, or for an
 24 order of the Court compelling document production. Instead, Federal Rule of Civil Procedure
 25 5(b)(1) governs, and it provides that: “If a party is represented by an attorney, service under this
 26 rule must be made on the attorney unless the court orders service on the party.” Stubbs Alderton
 27 has remained PersonalWeb’s counsel of record and *specifically invited* discussion of post-judgment
 28 issues up until Amazon first served its written discovery requests. (Dkts. 659 at 5.) Stubbs

1 Alderton's purported refusal to accept service of written discovery and the Court's orders violates
2 Rule 5 and is ineffective.

3 While Amazon previously referred to this tactic as "new" (Dkt. 659), it has since found
4 another instance in which a judgment debtor tried it. In *Wordtech Sys. v. Integrated Network Sols.,*
5 *Inc.*, No. CIV S-04-1971 MCE EFB, 2009 WL 3126409 (E.D. Cal. Sep. 24, 2009), the debtor
6 claimed that its counsel could not be served with discovery in aid of enforcement because he "did
7 not represent" the debtor "for post-judgment collections." *Id.* at *4. The court ruled that the
8 attorney was served properly with the requests, and ordered him to show cause why he should not
9 be sanctioned for, *inter alia*, failing to respond to them; failing to comply with the local rule
10 regarding withdrawal from representation; and failing to inform the court or creditor of his claim
11 to represent the debtor for a limited purpose or provide any authority for that claim. *Id.* at *3-4.

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13 Date: May 10, 2021

Respectfully submitted,

FENWICK & WEST LLP

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